IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2102 OF 2005

Mr.Ramesh Surajmal Gaur — Petitioner

vs.

The State of Maharashtra & ors. — Respondents

Mr.Ashok M. Saraogi for the petitioner.

Mrs.A.S.Pai, APP for respondent 1-State.

Mr.Manoj Bhatt i/by. Mr.R.Satyanarayan for respondent 3.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 27th February, 2007

P.C.

The petitioner has filed this petition praying that the complaint lodged by the 3rd respondent at Central Kotwali Police Station Indore, MP against him be quashed or in the alternative investigation of the said complaint be transferred to Bombay police.

2. The complaint filed by 3rd respondent is not annexed to the petition. We have perused a copy of the same which is produced in the court by the learned counsel for 3rd respondent. The 3rd respondent has stated in

the said complaint that she purchased the shares of Pentaloon Fashions (India) from Balaji Investments, Ratlam, M.P. under Delivery Memo No.1468 dated 19/10/95 at Ratlam, M.P. Balaji Investments are sub-broker of Dindayal Biyani. She could not get the said shares transferred to her name because she was unaware that Pentaloon Fashions (India)'s name was changed to Pentaloon Retail (India) Ltd. She sent a letter calling for information. The company sent a reply dated 18/7/05 stating that in respect of the same share certificates, the petitioner had made a report on 4/2/2004 to the police stating that they were lost. The petitioner had filed an affidavit to that effect on 2/4/2004. It was stated therein that the said share certificates were neither sold nor given as security to anyone. The petitioner also filed a bond to that effect.

3. According to the 3rd respondent as the market rate of the said shares had shot up, the petitioner with an ulterior motive filed a false report to the police stating that the shares were lost and got new share certificates issued in his favour. According to the 3rd respondent she has purchased the shares through registered broker of Bombay Stock Exchange and there is no question of the share certificates being lost. The 3rd respondent's case in short is that in order to cause

wrongful loss to her the petitioner made a false report to the police that shares which he had already sold were lost and on the basis of this false report he got duplicate share certificates issued. The petitioner seeks quashing of this complaint.

4. Relying very heavily on the judgment of the Supreme Court in **Navinchandra M. Majithia vs.State of Maharashtra, AIR 2000 SC 2968,** Mr.Saraogi, the learned counsel for the petitioner contended that the Indore police cannot entertain the complaint. He submitted that the alleged cause of action has arisen in Bombay and it is only the Bombay police or the Bombay Courts which can have the jurisdiction. He also contended that there is no privity of contract between the petitioner and respondent 3. The learned counsel contended that even if the documents annexed to the petition by the petitioner are carefully perused, it would be evident that the cause of action has arisen in Bombay. He drew our attention to the undertaking of the petitioner given to M/s.Pantaloon Retail India Limited. He stated that this undertaking is given in Bombay. He pointed out that affidavit annexed to the undertaking is also sworn in Bombay. He also pointed out that duplicate share certificates were also issued in Bombay and therefore the cause of action of the alleged offence has arisen in

Bombay and a fake cause of action is created by the complainant in Indore.

5. We have also heard the learned counsel for respondent 3-complainant. He pointed out that the shares were sold to respondent 3 in Indore, delivery of the shares has taken place in Indore and payment of the shares has also taken place in Indore and therefore the cause of action has arisen in Indore. He submitted that in the circumstances no interference is necessary with the complaint filed by the 3rd respondent.

6. We find substance in the submission of the learned counsel for respondent 3. The facts with which the Supreme Court was dealing in **Navinchandra Majithia's case (supra)**, are different. The Supreme Court on consideration of the facts in that case was of the view that the entire transaction upon which the complaint was based had taken place at Mumbai and not at any other place outside Mumbai and that a fake cause of action was created by the complainant. In our opinion, such are not the facts here. It certainly cannot be said that a fake cause of action is created by the complainant in Indore. It appears to us that the shares were sold in Indore, delivery of the shares was taken in Indore and the payment was also made in Indore. Substantial part

of the cause of action has arisen in Indore. It cannot be said that the entire cause of action has arisen in Indore. This submission of Mr.Saraogi is therefore rejected. On merits of the case, if the petitioner states that there is no privity of contract between him and the complainant, it is always open to him to agitate the same point before the trial Court. However, on that count the present petition cannot be entertained. No case is made out for quashing of the FIR. Petition is dismissed accordingly.

7. We however make it clear that on merits we have not expressed any final opinion and the trial Court dealing with the case shall decide the same independently uninfluenced by anything said by us in this order.

8. The learned counsel for the petitioner states that in view of the dismissal of the writ petition, the amount of Rs.10,000/- which is deposited in this Court may be ordered to be given back to the petitioner. The learned counsel for respondent 3 states that some costs may be awarded to respondent 3 out of this amount.

9. In the circumstances of the case, we direct the petitioner to give costs quantified at Rs.2000/- to respondent 3. The Registrar General of this Court is

directed to give Rs.2,000/- to respondent 3 or his counsel if they make an application in that behalf. An amount of Rs.8,000/- is directed to be handed over to the petitioner or his counsel.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]